

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JONATHAN ROBERTSON,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

Case No. 1:23-cv-00975-ADA-SAB

ORDER DENYING APPLICATION TO
PROCEED *IN FORMA PAUPERIS* AND
REQUIRING PLAINTIFF TO PAY FILING
FEE

(ECF No. 14)

DEADLINE: OCTOBER 5, 2023

Plaintiff Jonathan Robertson, filed the complaint in this action on June 23, 2023. (ECF No. 1.) At filing, Plaintiff was a state prisoner proceeding with counsel. Plaintiff did not pay the filing fee in this action and instead filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 3.) On July 5, 2023, the Court received Plaintiff's prisoner trust account statement from the Central California Women's Facility (CCWF). (ECF No. 6.) The statement provided that as of July 3, 2023, Plaintiff had \$12,619.13 in the trust account, and finding the available balance in Plaintiff's account reflected that Plaintiff could pay the \$402.00 filing fee for this action, on July 6, 2023, the Court issued findings and recommendations that the application to proceed *in forma pauperis* be denied. (ECF No. 8.) The Court's recommendation specifically stated:

Should Plaintiff have additional information to provide the Court, or should Plaintiff's available balance change by the time he receives this order, he may notify the Court. However, Plaintiff is

1 advised that the Court has the authority to consider any reasons
2 and circumstances for any change in Plaintiff's available assets and
3 funds. See Collier v. Tatum, 722 F.2d 653, 656 (11th Cir. 1983)
4 (district court may consider an unexplained decrease in an inmate's
5 trust account, or whether an inmate's account has been depleted
6 intentionally to avoid court costs).

7 (ECF No 8 at 2-3.)

8 Plaintiff, still represented by counsel, did not file objections to the findings and
9 recommendations within the time period to do so. (ECF No. 13.) On September 5, 2023, the
10 District Judge adopted the findings and recommendations and ordered Plaintiff to pay the filing
11 fee within thirty (30) days of service of the order. (ECF No. 13.) The District Judge's order
12 adopting did not discuss an option to file a renewed application to proceed *in forma pauperis*.
13 (ECF No. 13.) The filing fee is thus due October 5, 2023.

14 On September 14, 2023, Plaintiff, still represented by counsel, filed a motion to proceed
15 *in forma pauperis*. (ECF No. 14.) Now, Plaintiff's application indicates they are no longer
16 incarcerated, however, also writes the initials "CCWF," perhaps noting the previous place of
17 incarceration. Plaintiff claims no form of income, zero money in cash or checking/savings
18 accounts, and no property or assets. Further, the Court notes the application was signed by
19 Plaintiff on September 1, 2023, before the date the District Judge adopted the findings and
20 recommendations. Finally, the form used still has the signature affirming authorization to obtain
21 a prisoner trust statement.

22 In the Court's view, Plaintiff was ordered to pay the filing fee in this action by October 5,
23 2023, and has not. (ECF No. 13.) The District Judge's order expressly stated: "Plaintiff is
24 ordered to submit the appropriate filing fee in full no later than thirty (30) days from the date of
25 service of this order; and [] Plaintiff is warned that failure to comply with this order will result in
26 dismissal of this action." (ECF No. 13 at 2.) Given the fact Plaintiff is represented by counsel,
27 the previous recommendation based on the trust statement, the District Judge's order adopting
28 issued before the filed application (but before the application was signed) that required Plaintiff
29 to pay the filing fee, and the insufficient information in the current application in relation to the
30 previous application, the Court shall deny the instant application. Plaintiff and Plaintiff's

counsel are warned that this action may be summarily dismissed if the filing fee is not paid by October 5, 2023, as ordered by the District Judge in this action.

Based upon the foregoing, it is HEREBY ORDERED that:

1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 14) is DENIED;
and
2. **On or before October 5, 2023**, Plaintiff shall pay the filing fee for this action, or this action is subject to dismissal for failure to pay the filing fee in this action, failure to comply with the Court's order, and failure to prosecute.

IT IS SO ORDERED.

Dated: **September 15, 2023**


UNITED STATES MAGISTRATE JUDGE